

Basic Appellate Procedure¹

(All references are to the California Rules of Court
unless otherwise specified.)

I. Briefs

A. Filing Time Limits

1. The parties are notified when the record on appeal has been filed. (Rule 11(a)(2).)
2. In an ordinary civil case, appellant has 30 days from the date the record, or the reporter's transcript after a rule 5.1 election, is filed in the Court of Appeal to file an appellant's opening brief. Appellant has 70 days to do so after the filing of the rule 5.1 election where the appeal proceeds without the reporter's transcript. (Rule 15(a)(1).) In a juvenile dependency case, appellant similarly has 30 days to file the opening brief. (Rule 37.4(e).) However, in a criminal or juvenile delinquency case, appellant has 40 days from the filing of the record to file an opening brief. (Rules 33(c)(1) & 37.3(b)(1).)
3. Respondent has 30 days from the date the appellant's opening brief is filed to file the respondent's brief. (Rules 15(a)(2), 33(c)(2) & 37.3(b)(2).)
4. Appellant has 20 days from the date the respondent's brief is filed to file an appellant's reply brief. (Rules 15(a)(3), 33(c)(3) & 37.3(b)(3).) The brief of a non-appealing minor in a dependency appeal is due 10 days after the respondent's brief. (Rule 37.3(b)(4).)

¹ This informational handout does not cover all rules applicable to appeals. Consult the California Rules of Court to process your appeal properly.

B. Number of Copies & Service Requirements

1. A party to the appeal must:
 - a. File original and four copies of a brief. (Rule 44(b)(2)(A).)
 - b. Show proof of service on the clerk of the superior court, all parties, and the Attorney General when required under rule 44.5. (Rules 15(c)(1), 33(d)(4), 40.1(a) & 44.5(b).)
2. In criminal matters, the district attorney, the Attorney General and the defendant must be served also. (Rules 33(d)(1), 44.5(a)(2)(A).)
3. In civil matters, four copies of each brief must be served on the California Supreme Court (rules 15(c)(2), 44(b)(2)(A)):

350 McAllister Street	Second Floor
San Francisco, CA 94102-4783	-or- 300 South Spring Street
(415) 865-7000	Los Angeles, CA 90013
	(213) 830-7570

C. Binding and Cover Colors (Briefs, Motions, Writs and Petitions)

1. Binding: Briefs must be bound on the left margin. (Rule 14(b)(8).) No plastic covers will be accepted. (Ct. App., Fourth Dist., Local Rules, rule 2.) If stapled, the bound edge and the staples must be covered with tape. (Rule 14(b)(8).) Preferably, the cover is of recycled stock. It must be in the color prescribed by rule 44(c) and provide the information listed in rule 14(b)(10).
2. Cover Colors (rule 44(c)):

Appellant's Opening Brief or Appendix - Green
Respondent's Brief or Appendix - Yellow
Appellant's Reply Brief or Appendix - Tan
Joint Appendix - White
Amicus Curiae Brief - Gray
Answer to Amicus Curiae Brief - Blue
Petitions for Rehearing - Orange
Petitions for Review - White
Answers to Petitions for Rehearing & Review - Blue
Reply to Answer (Review) - White
Original Proceedings (Petition, Answer & Reply) - Red
3. No covers on motions.

D. Contents and Form of Briefs

1. The required contents of briefs generally and the appellant's opening brief specifically are set forth in rule 14(a).
2. The mandatory rules governing format of briefs are listed in rule 14(b).

E. Extension of Time

1. Civil Cases:

- a. The parties may extend the time under rule 15(a) to file a brief by up to 60 days by filing one or more stipulations in the Court of Appeal before the brief is due. Stipulations must be signed by and served on all parties. The original signature of at least one party must appear on the stipulation filed with the court, while the signatures of the other parties may be in the form of facsimile copies of the signed signature page of the stipulation. A stipulation is effective on filing, as the Court of Appeal may not shorten a stipulated extension if the aggregate of extensions is 60 days or less. (Rule 15(b)(1).)
- b. Where a party has been unable to obtain, or it would have been futile to seek, an extension by stipulation or the parties have stipulated to the maximum extension permitted under rule 15(b)(1), a party may apply to the presiding justice for an extension on a showing that such is the case and there is good cause. (Rule 15(b)(2); see also rules 43, 45(b) & 45.5(a)(3).) The request must contain specific facts showing good cause for granting the application and state when the brief is due, how long an extension is requested, and whether any prior extensions have been granted, their length and whether granted by stipulation or by the court. (Rules 43, 45(d) & 45.5(b).) In determining good cause, the reviewing court considers the factors listed in rule 45.5(b).

2. Criminal and Juvenile Delinquency Cases:

- a. The time for filing a brief in a criminal case cannot be extended by stipulation of the parties. (Rule 33(c)(4).)
- b. A party may apply to the presiding justice for an extension on a showing of good cause. (Rules 43, 45(b) & 45.5(a).) The request must contain specific facts showing good cause for granting the application and state when the brief is due, how long an extension

is requested, and whether any prior extensions have been granted and their length. (Rules 43, 45(d) & 45.5(b).) In determining good cause, the reviewing court considers the factors listed in rule 45.5(b).

3. Other Juvenile Cases:

Under rule 37.4(f) in appeals from judgments and appealable orders under Welfare and Institutions Code section 300 et seq. (dependency) and Family Code section 7800 et seq. (freeing a child from parental custody and control), only the reviewing court can grant extensions to serve and file briefs. An exceptional showing of good cause is required before the court will grant any extension.

4. A party must file the original request for an extension with proof of service on opposing counsel together with copies and preaddressed, stamped envelopes for each party. (Rules 43, 44(b)(2)(D) & 45(d).) In a civil case, the client must also be served with any extension request. The evidence of mailing or other delivery to the client need not state the address. (Rule 45(g).) Once the court has ruled on the request, the copies will be conformed and mailed to the parties in the envelopes provided. In a criminal matter, no envelope is necessary for the Attorney General.
5. All requests to extend time to file briefs are considered immediately. (Ct. App., Fourth Dist., Div. One, Internal Operating Practices & Proc., XI, Motions.)

F. Rule 17(a) And Rule 33(c)(5) Notices

1. If an appellant's opening brief or a respondent's brief is not timely filed, the court will send a notice under rule 17(a) (civil cases) or rule 33(c)(5) (criminal and juvenile delinquency cases). This notice gives a party in a civil case an additional 15 days (rule 17(a)), and a party in a criminal or juvenile case an additional 30 days (rule 33(c)(5)), within which to file the brief.
2. If the appellant's opening brief is not filed within 15 days in a civil case and 30 days in a criminal case from the date of the rule 17(a) or rule 33(c)(5) notice, the appeal will be dismissed. (Rules 17(a)(1) & (c), 33(c)(5).) If the respondent's brief is not timely filed from the date of the notice, the court will decide the appeal on the record, the opening brief, and any oral argument by the appellant. (Rules 17(a)(2) & (c), 33(c)(5).)
3. Within the grace period, a party may apply under rules 43 and 45(b), (d) for an extension of that time period for good cause. If a brief is not filed within the extended period granted by the court, the court

may impose the sanction under rule 17(c) without further notice. (Rules 17(d) & 33(c)(5).)

G. Late Filings

Briefs not timely filed must be approved by the presiding justice prior to acceptance for filing. (Rule 45(e).)

II. Motions

- A. A party making a motion in the Court of Appeal must file the original and three copies and show proof of service on the clerk of the superior court and opposing counsel. (Rules 41(a) & 44(b)(2)(C).) The motion must state the ground for the motion, the papers on which it is based, and the order or relief requested. (Rule 41(a)(1).) Additionally, it must be accompanied by a memorandum of points and authorities and documentary evidence (declarations and exhibits) of matters not in the appellate record. (Rule 41(a)(2).)
- B. Any opposition to the motion must be served and filed within 15 days after the motion is filed. (Rule 41(a)(3).) Motions will be held 15 days from the date of filing for opposition. Failure of the adverse party to oppose the motion may be deemed as consent to the granting of the motion. (Rule 41(c).)

III. Voluntary Abandonment, Settlement and Dismissal

A. Civil Appeals:

1. If a civil case settles after a notice of appeal has been filed, either as a whole or as to any party, the settling appellant must immediately serve and file a notice of settlement in the Court of Appeal. Where the parties have designated a clerk's or a reporter's transcript and the record has not been filed in the Court of Appeal, the settling appellant must also immediately serve a copy of the notice on the superior court clerk. (Rule 20(a)(1).)
 - a. If the case settles after the appellant receives notice setting oral argument, the appellant must immediately notify the Court of Appeal of the settlement by telephone or other expeditious method. (Rule 20(a)(2).)
 - b. Within 45 days after filing notice of settlement (unless otherwise ordered by the Court of Appeal), the settling appellant must file either an abandonment -- if the record has not yet been filed in the Court of Appeal -- or a request to dismiss -- if the record has been filed in the Court of Appeal. (Rule 20(a)(3).) If the appellant fails to do so and has not by letter to the Court of Appeal stated good cause why the appeal

should not be dismissed, the Court of Appeal may dismiss the appeal as to that appellant and order each side to bear its own costs on appeal. (Rule 20(a)(4).)

2. Before the filing of the record on appeal, the appellant has the absolute right to abandon the appeal by filing a written abandonment or a stipulation for abandonment with the clerk of the superior court. (Rule 20(b)(1).)
3. After the filing of the record, an abandonment or a stipulation of the parties to dismiss the appeal may be filed in the Court of Appeal (rule 20(c)(1)), which may order the dismissal and immediate issuance of the remittitur (rule 20(c)(2)).

B. Criminal Appeals:

The appellant (in non-death penalty cases) may abandon his/her appeal at any time. (Rule 30.3(a).) If the record has not been filed, the written abandonment is filed with the clerk of the superior court and operates to dismiss the appeal and to restore the jurisdiction of the superior court. (Rule 30.3(b)(1).) If the record has been filed, the abandonment is filed with the Court of Appeal, which may order the dismissal and immediate issuance of the remittitur. (Rule 30.3(b)(2).)

IV. Substitution or Withdrawal of Attorneys

- A. The original and one copy of a substitution or withdrawal of an attorney must be served and filed in the Court of Appeal. (Rules 44(b)(2)(D) & 48(b).) The substitution must be signed by the party and the new attorney. In all appeals and in original proceedings related to a superior court proceeding, the party must also serve the superior court. (Rule 48(b).)
- B. An attorney may request withdrawal by filing a motion to withdraw. Unless the court orders otherwise, the motion need be served only on the party represented and the attorneys directly affected. (Rule 48(c)(1).) The proof of service need not include the address of the party represented. However, if the motion is granted, then the withdrawing attorney must provide the court and the opposing party with the party's current or last known address and telephone number. (Rule 48(c)(2).)
- C. In all appeals and in original proceedings related to a superior court proceeding, the Court of Appeal will forward notice of any such withdrawal substitution to the clerk of the superior court. (Rule 48(c)(3).)

V. Oral Argument

- A. Upon the filing of the appellant's reply brief or expiration of the time to do so, the clerk will send a notice inquiring whether the parties desire oral argument.
- B. Parties desiring oral argument must respond within 10 days of the date of the notice. If no response is received within the time specified, oral argument is deemed waived.
- C. If oral argument is requested, the parties will be notified of the date and time approximately 30 days before the date scheduled for oral argument.
- D. Oral argument is generally held during the second week of the month. However, specific cases will be calendared during other times when resolution of the matter is urgent or for other good cause. Argument is limited to no more than fifteen minutes per side, unless the time is extended by advance written request and leave of court. (Rule 23(c); Misc. Order No. 021505 (Feb. 15, 2005); Ct. App., Fourth Dist., Div. One, Internal Operating Practices & Proc., VII, Oral Argument.)

VI. Petition for Rehearing

- A. Generally, a petition for rehearing must be served and filed within 15 days from the filing of the opinion. (Rule 25(b)(1); see rule 40.1.)
- B. An answer to a petition for rehearing cannot be filed unless the court requests one. If an answer is requested, then it must be served and filed within 8 days after the order is filed unless the court orders otherwise. A petition for rehearing normally will not be granted unless the court has requested an answer. (Rule 25(b)(2); see rule 40.1.)
- C. The Court of Appeal retains jurisdiction for 30 days from the date the opinion was filed, a request for publication was granted, or the opinion was modified changing the judgment. (Rule 24(b)(1), (b)(5) & (c)(2).)

VII. Petition for Review

- A. A party must file a petition for review in the California Supreme Court within 10 days after the expiration of the Court of Appeal's jurisdiction. (Rules 24(b)(1) & 28(e)(1).)
- B. The Clerk's Office for the Fourth Appellate District, Division One is authorized to accept Supreme Court filings. However, service copies of Court of Appeal filings for the Supreme Court must be submitted directly to the Supreme Court.

- C. For further information concerning Supreme Court procedures, consult the rules or call (213) 830-7570 (Los Angeles) or (415) 865-7000 (San Francisco).

VIII. Remittitur - [Rule 26]

- A. A remittitur is the document that communicates a final determination by the reviewing court to the trial court, transferring the jurisdiction of the Court of Appeal back to the trial court where the case originated so as to permit that court to proceed in accordance with the decision on appeal.
- B. Absent a petition for review and any extension to the time period for the Supreme Court to grant review on its own motion, a remittitur issues 31 days after the Court of Appeal decision is final. (See rules 26, 28.2(c).)
- C. A party entitled to costs on appeal (rule 27(a), (b)) must file a cost bill (memorandum of costs) with the superior court within 40 days of the date of mailing of the notice of issuance of the remittitur (rule 27(d)(1)). Rule 27(c) defines the items that are recoverable as costs on appeal.

IX. Original Proceedings - [Rules 56-60.5]

- A. A petitioner must:
 - 1. File an original and four copies of the petition. (Rules 44(b)(2)(C), 56(d)(3).) All petitions must be verified by petitioner or counsel. (Rule 56(b)(4)); Pen. Code, §§ 1474, subd. 3, & 1475.) Exhibits which are voluminous may be bound separately from the petition. (Rule 56(d)(1)(A).) The court requires only the original (no copies) of separately bound exhibits. (Rules 44(b)(2)(E), 56(d)(3).) A person who is seeking habeas corpus relief and is not represented by counsel is required to file only an original petition and one set of supporting documents. (Rules 44(b)(2)(B), 60(a)(3).)
 - 2. Show proof of service on the clerk of the superior court and opposing counsel. For each attorney served, the proof of service must provide the name of the party the attorney represents. (Rule 56(f)(3).) The petitioner must state on the cover of the petition the name of the judge from whose ruling the writ is taken. (Rules 14(b)(10)(C), 56(a)(1).)
 - 3. Pay a \$655.00 filing fee. (Make checks or money orders payable to: "Clerk, Court of Appeal.") No filing fee is required for criminal proceedings, contempt proceedings, juvenile proceedings, cases involving termination of parental rights, petitions filed by governmental agencies, petitions for a writ of supersedeas, or petitions for a writ of review in a WCAB proceeding.

- B. A petitioner who requests an immediate stay or other immediate relief must serve the petition by personal delivery or by an expeditious method consented to in advance by the party served. If the respondent or any real party in interest is not so served, absent a showing of good cause, the court will not act on the request for five days, except to deny it summarily. (Ct. App., Fourth Dist., Local Rules, rule 1.) If the petitioner is seeking an immediate stay or immediate relief, "STAY REQUESTED" or "IMMEDIATE RELIEF REQUESTED" or words of similar effect must be placed conspicuously on the cover of the petition. (Rules 49.5(a)(1), 56(b)(7); Ct. App., Fourth Dist., Local Rules, rule 1.) A petitioner who requests a stay or writ of supersedeas must also state on the cover of the petition (1) the trial court and department involved and (2) the name and telephone number of the trial judge whose order the request seeks to stay. (Rules 49.5(b), 56(b)(7).)
- C. The Court of Appeal may deny the petition without considering opposition. (Ct. App., Fourth Dist., Div. One, Internal Operating Practices & Proc., V, Original Proceedings.) If a response is desired, the clerk will notify counsel by telephone.
- D. A "Handout on Writs" is available from the Clerk's Office that explains how Division One of the Fourth Appellate District handles petitions for writs of mandate, prohibition and supersedeas.

X. Settlement Conferences

The court has a *voluntary settlement program*. The guidelines and form for initiating a voluntary conference are attached. (Ct. App., Fourth Dist., Div. One, Internal Operating Practices & Proc., VIII, Settlement Conferences-Litigant Initiated.)

**COURT OF APPEAL
FOURTH APPELLATE DISTRICT
STATE OF CALIFORNIA**

Court No.

THE UNDERSIGNED, counsel of record for a party to the above-entitled pending appeal, hereby request that settlement procedures be initiated with respect to the appeal. The undersigned agree to comply with the Guidelines for this settlement process, which appear on the reverse side of this form, and further agree to participate in good faith in appellate settlement procedures to be administered by the court.

(Optional): The undersigned further stipulate and request that _____ shall be appointed settlement justice, and if said individual is not a sitting member of the Appellate Court agree to pay reasonable compensation for serving as settlement justice.

Dated: _____

(Attorneys of Record for Parties to the Appeal)

ORDER

UPON THE ABOVE REQUEST, AND GOOD CAUSE APPEARING,
_____ is hereby appointed Settlement Justice with respect to the above-entitled pending appeal, and is authorized to hold hearings, direct the filing of documentation, require the attendance of parties, and otherwise to administer settlement procedures in the case.

Dated: _____

Presiding Justice

(Continued on reverse)
APPELLATE SETTLEMENT
(Fourth Appellate District)

GUIDELINES FOR APPELLATE SETTLEMENT PROGRAM

The following guidelines for participation in appellate settlement procedures do not constitute rules of court. They are made for the purpose of providing informal aid to counsel interested in participating in settlement conferences at the appellate level.

1. Settlement efforts will be commenced by filing with the Court of Appeal a written request for settlement conference, executed by the parties to a pending appeal. If the appeal involves more than two parties, settlement procedures will be commenced upon the request for any two opposing parties.
2. Settlement procedures may be initiated at any time up to 30 days following the filing of final briefs. The procedures may be initiated prior to the filing of any briefs, or at any period during the briefing period. The commencement of settlement procedures will ordinarily not permit the interruption or extension of the brief filing schedule.
3. Upon receipt of a stipulated settlement conference request, the Presiding Justice will appoint a Settlement Justice. The parties stipulating to settlement procedures may request the appointment of a specific justice as Settlement Justice. Selection of the Settlement Justice shall, however, always be at the discretion of the Presiding Justice. The Court also reserves the right to decline to initiate settlement procedures in any specific case.
4. If a Settlement Justice is appointed who is not presently sitting, any compensation required by that person shall be paid by the parties requesting the settlement procedures. No such appointment requiring compensation shall be made, however, without the agreement of the parties.
5. Settlement procedures following appointment of a Settlement Justice shall be at the discretion of the Settlement Justice, acting in consultation with the parties. The filing of settlement conference briefs may be required, in the discretion of the Settlement Justice, if the conference takes place before final briefing of the case for appellate review. The Settlement Justice may, and usually will, require the attendance at settlement conferences of parties or their authorized agents.
6. The form on the reverse may be utilized for the initiation of settlement procedures, but is not a mandatory form.

APPELLATE SETTLEMENT (Fourth Appellate District)